

AMENDED IN ASSEMBLY MARCH 14, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1450

Introduced by Assembly Member Allen

(Principal coauthors: Assembly Members Mendoza and Swanson)

(Coauthors: Assembly Members ~~Mendoza and Swanson~~ Alejo, Ammiano, Beall, Blumenfield, Fong, Hall, Solorio, and Wieckowski)

January 5, 2012

An act to add ~~Chapter 2.5 (commencing with Section 1812.50953)~~ to Title 2.91 of Part 4 of Division 3 of the Civil Code, and to add Chapter 3.95 (commencing with Section ~~1046~~ 1045) to Part 3 of Division 2 of the Labor Code, *and to add Section 10285.6 to the Public Contract Code*, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as amended, Allen. Employment: discrimination: status as unemployed.

Existing law contains provisions that define unlawful discrimination and employment practices by employers and employment agencies.

This bill would make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer ~~to knowingly or intentionally refuse to consider for employment or refuse to offer employment to an individual because of the individual's status as unemployed, publish, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to take specified employment actions relating to employment status, as defined, including, among other things, refusing to hire a person because of that person's employment status and publishing an advertisement or~~

announcement for any job that includes provisions pertaining to an individual's *current employment or employment status as unemployed*, as specified, or direct or request that an employment agency take an individual's status as unemployed into account in screening or referring applicants for employment, *as specified*.

~~The bill would also make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employment agency to knowingly or intentionally refuse to consider or refer an individual for employment because of the individual's status as unemployed, limit, segregate, or classify individuals in any manner that may limit their access to information about jobs or referral for consideration of jobs because of their status as unemployed, or publish an advertisement or announcement, as described above with respect to employers.~~

This bill would subject an employer ~~or, an employment agency, or a person who operates an Internet Web Site for posting jobs in this state~~ who violates the above provisions to civil penalties that increase as the number of violations increase. ~~The bill would state that it shall not be construed to create a private cause of action, as specified.~~

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies.

This bill would provide that failure to comply with the requirements of the bill would constitute a breach of the contract and may be grounds for canceling, terminating, or suspending the contract, as specified, and debarring the contractor from eligibility for an award of future state agency contracts for a period not to exceed 3 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Chapter 2.5 (commencing with Section~~
- 2 ~~1812.50953) is added to Title 2.91 of Part 4 of Division 3 of the~~
- 3 ~~Civil Code, to read:~~

1 ~~CHAPTER 2.5. EMPLOYMENT AGENCY DISCRIMINATION ON THE~~
2 ~~BASIS OF UNEMPLOYMENT STATUS~~

3
4 ~~1812.50953. (a) For purposes of this chapter, “status as~~
5 ~~unemployed” means an individual’s present or past unemployment~~
6 ~~regardless of the length of time that the individual was unemployed.~~

7 ~~(b) Unless based on a bona fide occupational qualification, an~~
8 ~~employment agency shall not knowingly or intentionally do any~~
9 ~~of the following:~~

10 ~~(1) Refuse to consider or refer an individual for employment~~
11 ~~because of the individual’s status as unemployed.~~

12 ~~(2) Limit, segregate, or classify individuals in any manner that~~
13 ~~may limit their access to information about jobs or referral for~~
14 ~~consideration of jobs because of their status as unemployed.~~

15 ~~(3) Publish in print, on the Internet, or in any other medium, an~~
16 ~~advertisement or announcement for any job that includes either of~~
17 ~~the following:~~

18 ~~(A) A provision stating or indicating that an individual’s status~~
19 ~~as unemployed disqualifies the individual for a job.~~

20 ~~(B) A provision stating or indicating that an employer will not~~
21 ~~consider an applicant for employment based on that individual’s~~
22 ~~status as unemployed.~~

23 ~~(c) This chapter does not prohibit an employment agency from~~
24 ~~doing either of the following:~~

25 ~~(1) Publishing, in print, on the Internet, or in any other medium,~~
26 ~~an advertisement or announcement for any job that sets forth other~~
27 ~~lawful qualifications for a job, including the holding of a current~~
28 ~~and valid professional or occupational license, certificate,~~
29 ~~registration, permit, or other credential, or a minimum level of~~
30 ~~education or training or professional, occupational, or field~~
31 ~~experience.~~

32 ~~(2) Printing, circulating, or causing to be printed or circulated~~
33 ~~a publication, advertisement, or solicitation for a job vacancy that~~
34 ~~contains any provision stating that only applicants who are~~
35 ~~currently employed by a particular employer will be considered.~~

36 ~~(d) An employment agency shall not do either of the following:~~

37 ~~(1) Interfere with, restrain, or deny the exercise of or the attempt~~
38 ~~to exercise any right provided under this chapter.~~

39 ~~(2) Discriminate against any individual because the individual:~~

40 ~~(A) Opposed any practice made unlawful by this chapter.~~

1 ~~(B) Has caused to be instituted any proceeding under or related~~
2 ~~to this chapter.~~

3 ~~(C) Has given, or is about to give, any information in connection~~
4 ~~with any inquiry or proceeding relating to any right provided under~~
5 ~~this chapter.~~

6 ~~(D) Has testified, or is about to testify, in any inquiry or~~
7 ~~proceeding relating to any right provided under this chapter.~~

8 ~~(e) (1) An employment agency that violates this section shall~~
9 ~~be subject to a civil penalty in an amount not to exceed one~~
10 ~~thousand dollars (\$1,000) for the first violation, five thousand~~
11 ~~dollars (\$5,000) for the second violation, and ten thousand dollars~~
12 ~~(\$10,000) for each subsequent violation, enforceable by the~~
13 ~~Attorney General or any city attorney.~~

14 ~~(2) Notwithstanding Section 1812.523, this chapter does not~~
15 ~~create, establish, or authorize a private cause of action by an~~
16 ~~aggrieved person against an employment agency that has violated,~~
17 ~~or is alleged to have violated, this chapter.~~

18 ~~(3) A violation of this chapter does not constitute a misdemeanor~~
19 ~~pursuant to Section 1812.523.~~

20 ~~SEC. 2.~~

21 ~~SECTION 1. Chapter 3.95 (commencing with Section 1046)~~
22 ~~1045) is added to Part 3 of Division 2 of the Labor Code, to read:~~

23
24 ~~CHAPTER 3.95. EMPLOYER-EMPLOYMENT DISCRIMINATION ON~~
25 ~~THE BASIS OF UNEMPLOYMENT EMPLOYMENT STATUS~~
26

27 *1045. For purposes of this chapter, the following definitions*
28 *apply:*

29 *(a) "Contractor" means a person who is a party to a contract*
30 *with a state governmental agency, including any department,*
31 *division, subcontractor, or other unit that is responsible for*
32 *performance under the contract. "Contractor" does not include*
33 *a state government agency.*

34 *(b) "Employer" means a person who has 15 or more employees*
35 *for each working day in each of 20 or more calendar weeks in the*
36 *current or preceding calendar year and includes both of the*
37 *following:*

38 *(1) A person who acts, directly or indirectly, in the interest of*
39 *an employer with respect to employing individuals to work for the*
40 *employer.*

1 (2) *A successor in interest of an employer.*

2 (c) *“Employment agency” has the same meaning as defined in*
3 *Section 1812.501 of the Civil Code.*

4 (d) *“Employment status” means an individual’s present*
5 *unemployment, regardless of the length of time that the individual*
6 *has been unemployed.*

7 1046. (a) ~~For purposes of this chapter, the following definitions~~
8 ~~apply:~~

9 ~~(1) “Employer” means a person who has 15 or more employees~~
10 ~~for each working day in each of 20 or more calendar weeks in the~~
11 ~~current or preceding calendar year and includes both of the~~
12 ~~following:~~

13 ~~(A) A person who acts, directly or indirectly, in the interest of~~
14 ~~an employer with respect to employing individuals to work for the~~
15 ~~employer.~~

16 ~~(B) A successor in interest of an employer.~~

17 ~~(2) “Status as unemployed” means an individual’s present or~~
18 ~~past unemployment regardless of the length of time that the~~
19 ~~individual was unemployed.~~

20 ~~(b) Unless based on a bona fide occupational qualification, an~~
21 ~~employer shall not knowingly or intentionally do any of the~~
22 ~~following:~~

23 ~~(1) Refuse to consider for employment or refuse to offer~~
24 ~~employment to an individual because of the individual’s~~
25 ~~employment status as unemployed.~~

26 ~~(2) Publish in print, on the Internet, or in any other medium; an~~
27 ~~advertisement or announcement for any job that includes either of~~
28 ~~the following:~~

29 ~~(A) A provision stating or indicating that an individual’s status~~
30 ~~as unemployed disqualifies the individual current employment is~~
31 ~~a requirement for a job.~~

32 ~~(B) A provision stating or indicating that an employer will not~~
33 ~~consider an applicant for employment based on that individual’s~~
34 ~~employment status as unemployed.~~

35 ~~(3) Direct or request that an employment agency, as defined in~~
36 ~~subdivision (a) of Section 1812.501 of the Civil Code, take an~~
37 ~~individual’s employment status as unemployed into account in~~
38 ~~screening or referring applicants for employment.~~

39 ~~(e) This~~

1 **(b)** *Unless based on a bona fide occupational qualification, an*
2 *employment agency shall not do any of the following:*

3 **(1)** *Refuse to offer employment to an individual, or to consider*
4 *or refer an individual for employment because of the individual's*
5 *employment status.*

6 **(2)** *Limit, segregate, or classify individuals in any manner that*
7 *may limit their access to information about jobs or referral for*
8 *consideration of jobs because of their employment status.*

9 **(3)** *Publish in print, on the Internet, or in any other medium an*
10 *advertisement or announcement for any job that includes either*
11 *of the following:*

12 **(A)** *A provision stating or indicating that an individual's current*
13 *employment is a requirement for a job.*

14 **(B)** *A provision stating or indicating that an employer will not*
15 *consider an applicant for employment based on that individual's*
16 *employment status.*

17 **(c)** *Unless based on a bona fide occupational qualification, a*
18 *person who operates an Internet Web site for posting jobs in this*
19 *state shall not publish on that Internet Web site an advertisement*
20 *or announcement for any job that includes:*

21 **(1)** *A provision stating or indicating that an individual's current*
22 *employment is a requirement for a job.*

23 **(2)** *A provision stating or indicating that an employer will not*
24 *consider an applicant for employment based on that individual's*
25 *employment status.*

26 **(d)** *This chapter does not prohibit an employer, an employment*
27 *agency, or a person operating an Internet Web site for posting*
28 *jobs in this state from doing either of the following:*

29 **(1)** *Publishing, in print, on the Internet, or in any other medium,*
30 *an advertisement or announcement for any job that sets forth other*
31 *lawful qualifications for a job, including, but not limited to, the*
32 *holding of a current and valid professional or occupational license,*
33 *certificate, registration, permit, or other credential, or a minimum*
34 *level of education or training or professional, occupational, or field*
35 *experience.*

36 **(2)** *Printing or circulating or causing to be printed or circulated*
37 *a publication, advertisement, or solicitation for a job vacancy that*
38 *contains any provision stating that only applicants who are*
39 *currently employed by that employer will be considered.*

40 ~~(d)~~

1 (e) An employer, *an employment agency, or a person operating*
2 *an Internet Web site for posting jobs in this state* shall not do either
3 of the following:

4 (1) Interfere with, restrain, or deny the exercise of or the attempt
5 to exercise any right provided under this chapter.

6 (2) Discriminate against any individual because the individual:

7 (A) Opposed any practice made unlawful by this chapter.

8 (B) Has caused to be instituted any proceeding under or related
9 to this chapter.

10 (C) Has given, or is about to give, any information in connection
11 with any inquiry or proceeding relating to any right provided under
12 this chapter.

13 (D) Has testified, or is about to testify, in any inquiry or
14 proceeding relating to any right provided under this chapter.

15 ~~(e)-(1)-~~

16 (f) An employer, *an employment agency, or a person operating*
17 *an Internet Web site for posting jobs in this state* who violates this
18 section shall be subject to a civil penalty in an amount not to exceed
19 one thousand dollars (\$1,000) for the first violation, five thousand
20 dollars (\$5,000) for the second violation, and ten thousand dollars
21 (\$10,000) for each subsequent violation, enforceable by the ~~Chief~~
22 ~~of the Division of Labor Standards Enforcement~~ *Labor*
23 *Commissioner* pursuant to the procedures specified in Chapter 4
24 (commencing with Section 79) of Division 1.

25 ~~(2) This chapter does not create, establish, or authorize a private~~
26 ~~cause of action by an aggrieved person against an employer who~~
27 ~~has violated, or is alleged to have violated, this chapter.~~

28 1047. (a) A contract entered into after January 1, 2013,
29 between a state agency and a contractor who is an employer shall
30 include an express or implied requirement that the contractor
31 comply with the requirements of this chapter. Failure to comply
32 with the requirements of this chapter, as determined by the Labor
33 Commissioner, pursuant to subdivision (f) of Section 1046, shall
34 constitute a breach of the contract and may be grounds for
35 canceling, terminating, or suspending the contract, and debarring
36 the contractor from eligibility for future state agency contracts.

37 (b) In accordance with regulations adopted by the Division of
38 Labor Standards Enforcement, and upon determining that a
39 contractor who is an employer has violated this chapter, the Labor

1 *Commissioner may, after consulting with the contracting state*
2 *agency, do any or all of the following:*

3 *(1) Direct the state agency to cancel, terminate, or suspend the*
4 *contract, or any segregable portion thereof.*

5 *(2) Debar the contractor from eligibility for an award of a future*
6 *state agency contract for a period not to exceed three years.*

7 *1048. This chapter does not preclude an employer, an*
8 *employment agency, or a person who operates an Internet Web*
9 *site for posting jobs in this state from considering an individual's*
10 *employment history or from examining the reasons underlying an*
11 *individual's employment status in assessing an individual's ability*
12 *to perform a job or in otherwise making employment decisions*
13 *pertaining to that individual.*

14 *SEC. 2. Section 10285.6 is added to the Public Contract Code,*
15 *to read:*

16 *10285.6. A contractor, as defined in Section 1045 of the Labor*
17 *Code, who has been debarred by the Labor Commissioner pursuant*
18 *to Section 1047 of the Labor Code for a period not to exceed three*
19 *years, shall be ineligible during that time for an award of a*
20 *contract pursuant to this chapter.*